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Newman & Partners

Licensed Insolvency Practitioners

RECOVERY & REVIVAL BULLETIN

Welcome to the latest issue of our Recovery and Revival Bulletin, designed to keep you up-to-date on insolvency matters that may be of interest to you. If you have any feedback on this bulletin, or would like to know more about our services or how we can help you, please contact us on **020 8357 2727** or at **insolvency@newmanandpartners.co.uk**

HMRC to be re-established as 'preferred creditor' for certain types of liability

Important changes unveiled as part of this year's Autumn Budget announcements will see HM Revenue & Customs (HMRC) re-established as a 'preferred creditor' in insolvency cases. The news, which was announced by Chancellor Philip Hammond on Monday 29 November, is likely to have far-reaching implications for struggling small and medium-sized enterprises (SMEs) – which could find themselves 'missing out' on money they are owed, it has been warned.

Under the existing rules, taxes such as PAYE and VAT paid by employers and customers that are temporarily held by an insolvent company can be used to cover the company's debts to other creditors, instead of being paid directly to HMRC, which is currently left in a similar position to other unsecured creditors.

However, the Chancellor has voiced concerns that this approach sees the tax authority miss out on hundreds of thousands of pounds in uncollected funds, which is why it has now been confirmed that HMRC will be re-established as a preferred creditor from 6 April 2020.

This will ensure that when a business enters insolvency, more of the taxes "paid in good faith by its employees and customers, and temporarily held in trust by the business", will be paid to the Government to fund public spending, instead of to a business' creditors.

Under the new rules, it is thought that HMRC will remain below other preferential creditors, effectively employee remuneration. However, commentators are warning that unsecured creditors may find they are able to recover less or nothing at all from their insolvent debtors instead of sharing the funds side by side with HMRC.

Concerns have been raised that this arrangement could prove to be problematic for ordinary trade creditors, who will most likely find themselves with lower realisations in an insolvent business to recover their debts. This could also have a negative impact on the cashflow within a creditor's business, which could again have wider implications for customers and creditors further down the line.

Providing the right advice to your clients when they may incur substantial bad debts is crucial, and any concerns regarding insolvency are always best explored sooner rather than later. To find out more, please contact us.

Total number of corporate insolvencies up by almost 20 per cent quarter-on-quarter

New figures published by the Insolvency Service in recent days reveal that corporate insolvencies across England and Wales increased by 19.3 per cent quarter-on-quarter in September. According to the figures, a total of 4,308 firms entered insolvency in the third quarter of this year.

Of these, 3,083 (or 71.6 per cent) occurred via Creditors' Voluntary Liquidations (CVLs) – a procedure which can be instigated by an insolvent company enabling it to sell-off its assets and distribute the proceeds to its creditors as it is dissolved.

Commentators have been keen to point out that the latest figures represent the first time that there have been more than 4,000 corporate insolvencies in one quarter since the beginning of 2014. Moreover, 2018 has seen higher rates of insolvency than the year before in every single quarter so far.

Of all industries and sectors, businesses in the construction industry suffered the greatest number of insolvencies in the 12 months until the end of the third quarter (Q3) of 2018. This was followed closely by the wholesale and retail trade sectors and the vehicle repair industry, the report reveals.

A spokesperson on behalf of insolvency trade body R3 pointed out that the outlook for many British businesses was still bleak. He added that renewed upwards pressure on wages and possible future interest rate rises would all need to be navigated by struggling firms in the months ahead, even though consumer spending growth appears to remain robust.

However, the report reveals that while the outlook is difficult for many businesses, the picture for personal insolvencies is looking a little brighter at the moment, with the total number of individual insolvencies in Q3 falling by 10.5 per cent quarter-on-quarter.

Our team at Newman and Partners can provide help to you if your client is struggling with debt issues or facing insolvency. Such concerns are always best explored at the earliest possible opportunity. To find out more about our debt management services, please contact us.

Are CVAs 'fit for purpose'?

Creditors Voluntary Arrangements (CVAs) – an insolvency procedure which has proved to be very popular with a number of high-profile retailers facing financial distress in recent months – have faced widespread criticism of late amid concerns that such procedures have placed undue strain on commercial landlords.

In recent months, insolvency trade body R3 has published a report entitled *Company Voluntary Arrangements: Evaluating Successes and Failures*, which brings into question the issue of whether or not such arrangements are 'fit for purpose'. The report comments on the effectiveness of CVAs in their existing form and suggests ways that they might be redeveloped for improvement in the near future.

The report confirms that a CVA is largely an "effective tool" in many situations, pointing towards the flexibility of CVAs as one of their key benefits. Furthermore, it points out that CVAs are also beneficial in that they enable companies to retain direct control over their businesses throughout the restructuring process – and that they do not have the same 'stigma' attached as administration. Nevertheless, CVAs are heavily criticised on account of their lack of transparency and the fact that directors often do not plan ahead enough to deliver their restructuring plans in a robust way.

Following the publication of the report, commentators have suggested that there should be "an enhanced degree of transparency" involved in both the construction and the implementation of these arrangements in order to ensure all stakeholders can feel 100 per cent confident as the procedure takes its course. Elsewhere, other experts have suggested that companies need to consider the fact that there is no one-size-fits-all approach and that other insolvency tools need to be given more consideration during times of financial hardship, such as Schemes of Arrangement.

In light of R3's findings and the comments they have provoked, calls for a review of the existing CVA framework are beginning to materialise, particularly with regards to bringing a higher threshold for nominees and the content of their reports into the process. According to commentators, such reforms would help to add "much-needed transparency" to what has largely come to be considered as an 'opaque' process.

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